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SERVICE DATE - OCTOBER 22, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 613X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–  
IN JEFFERSON COUNTY, AL

Decided: October 21, 2004

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 16.47-mile rail line extending from milepost ONC 384.00 at Black Creek to milepost ONJ 400.47 at West Jefferson, in Jefferson County, AL. Notice of the exemption was served and published in the Federal Register on September 22, 2003 (68 FR 55085). The notice stated that, if consummation had not been effected by CSXT's filing of a notice of consummation by September 22, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

By decision and notice of interim trail use or abandonment (NITU) served October 21, 2003, the proceeding was reopened and a 180-day period was authorized for the Jefferson County Commission (County) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trail use negotiation period under the NITU was scheduled to expire on April 19, 2004, but was extended to October 16, 2004, by decision served on April 19, 2004.<sup>1</sup>

On October 12, 2004, the County filed a request to extend the trail use negotiating period. Also, on October 15, 2004, CSXT filed a request for a 6-month extension of the NITU negotiating period until April 16, 2005. The County states that it and CSXT are working diligently to reach an agreement, but do not anticipate being able to complete the negotiations by October 16, 2004, and they want to continue trail use negotiations. In addition, CSXT states that the abandonment has not been consummated and requests an extension of the consummation notice filing deadline until June 16, 2005.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board

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<sup>1</sup> The October 21, 2003 decision also imposed an environmental condition that required CSXT to provide the National Geodetic Survey with 90 days' notice prior to any salvage activities in order to plan the relocation of three geodetic station markers that may be affected by the abandonment.

retains jurisdiction and the NITU negotiating period may be extended.<sup>2</sup> Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Because an extension of the consummation notice filing deadline and the additional 6-month NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act, and the rail carrier has indicated its willingness to continue negotiations, the requested extensions will be granted. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990). Accordingly, the NITU negotiating period will be extended until April 16, 2005,<sup>3</sup> and the consummation notice filing deadline will be extended until June 16, 2005.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request by the County and CSXT for an additional 6-month NITU negotiating period and the request by CSXT for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to April 16, 2005.
3. The authority to abandon must be exercised on or before June 16, 2005.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>2</sup> See Rail Abandonments – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

<sup>3</sup> Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company–Abandonment Exemption–In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).